

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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AMERICAN BUILDERS AND  
CONTRACTORS SUPPLY  
COMPANY, INC.

Plaintiff,

v.

RAYMOND CLOSE,  
GALLAGHER LAW FIRM,  
FAIRVIEW HEALTH SERVICES  
d/b/a FAIRVIEW SOUTHDAL  
HOSPITAL,  
EMERGENCY PHYSICIANS, P.A.,  
MINNESOTA HEART CLINIC, INC.,  
GARY CRAMER,  
CANDACE DICK,  
STEVEN HEIFETZ,  
LISA HOLLENSTEINER,  
ROBERT KETROSER,  
SETH LASHKOWITZ, and  
DOMINIC PLUCINSKI,

Case Type:

Civil Action No. \_\_\_\_\_

Defendants.

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**COMPLAINT FOR INTERPLEADER**

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Plaintiff, American Builders and Contractors Supply Company, Inc. ("ABC Supply Company"), through its undersigned attorneys, for its Complaint, pursuant to Fed. R. Civ. P. 22, states as follows:

**PARTIES**

1. ABC Supply Company is a Delaware corporation with a principal place of business of One ABC Parkway, Beloit, Wisconsin 53511.

2. ABC Supply Company is the plan sponsor for the ABC Supply and Affiliate's Group Health Benefit Plan (the "ABC Group Health Plan").

3. Upon information and belief, Defendant Raymond Close ("Close") is an adult resident of the state of Minnesota.

4. At all times relevant to this action, Close has been a participant in the ABC Group Health Plan.

5. Upon information and belief, Defendant Gallagher Law Firm is a Minnesota entity with a principal place of business of 3252 Rice Street, St. Paul, Minnesota 55126.

6. Upon information and belief, Defendant Fairview Health Services, with a business address of 2450 Riverside Avenue, Minneapolis, Minnesota 55454, is a Minnesota non-profit corporation that does business as Fairview Southdale Hospital with a business address of 6401 France Avenue South, Edina, Minnesota 55435.

7. Upon information and belief, Defendant Emergency Physicians, Professional Association is a Minnesota corporation with a principal place of business of 5435 Feltl Road, Minnetonka, Minnesota 55343.

8. Upon information and belief, Defendant Minnesota Heart Clinic, Inc. is a Minnesota corporation with a principal place of business of 6405 France Avenue South, Suite 200, Edina, Minnesota 55435.

9. Upon information and belief, Defendant Gary Cramer, M.D., F.A.C.C. is an adult resident of the state of Minnesota, with a business address of 6405 France Avenue South, Suite 200, Edina, Minnesota 55435.

10. Upon information and belief, Defendant Cramer was employed by Minnesota Heart Clinic, Inc. at all times relevant to this action.

11. Upon information and belief, Defendant Candace Dick, M.D., F.A.C.C. is an adult resident of the state of Minnesota, with a business address of 6405 France Avenue South, Suite 200, Edina, Minnesota 55435.

12. Upon information and belief, Defendant Dick was employed by Minnesota Heart Clinic, Inc. at all times relevant to this action.

13. Upon information and belief, Defendant Steven Heifetz, M.D., F.A.C.C. is an adult resident of the state of Minnesota, with a business address of 6405 France Avenue South, Suite 200, Edina, Minnesota 55435.

14. Upon information and belief, Defendant Heifetz was employed by Minnesota Heart Clinic, Inc. at all times relevant to this action.

15. Upon information and belief, Defendant Lisa Hollensteiner, M.D. is an adult resident of the state of Minnesota, with a business address of 5435 Feltl Road, Minnetonka, Minnesota 55343.

16. Upon information and belief, Defendant Hollensteiner was employed by Emergency Physicians, P.A. at all times relevant to this action.

17. Upon information and belief, Defendant Robert Ketroser, M.D., F.A.C.C. is an adult resident of the state of Minnesota, with a business address of P.O. Box 77045, Minneapolis, Minnesota 55480.

18. Upon information and belief, Defendant Ketroser was employed by Minnesota Heart Clinic, Inc. at all times relevant to this action.

19. Upon information and belief, Defendant Seth Lashkowitz, M.D. is an adult resident of the state of Minnesota, with a business address of 5435 Feltl Road, Minnetonka, Minnesota 55343.

20. Upon information and belief, Defendant Lashkowitz was employed by Emergency Physicians, P.A. at all times relevant to this action.

21. Upon information and belief, Defendant Dominic Plucinski, M.D., F.A.C.C. is an adult resident of the state of Minnesota, with a business address of 6405 France Avenue South, Suite 200, Edina, Minnesota 55435.

22. Upon information and belief, Defendant Plucinski was employed by Minnesota Heart Clinic, Inc. at all times relevant to this action.

#### **JURISDICTION AND VENUE**

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because there is complete diversity between ABC Supply Company and all of the Defendants, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

24. Venue is proper pursuant to 28 U.S.C. § 1391 because, upon information and belief, the Defendants reside in the judicial district.

### **CLAIM FOR INTERPLEADER**

25. On or about October and November of 2009, Close required medical treatment, which was provided by all of the Defendants other than Close and Gallagher Law Firm (the "Medical Provider Defendants").

26. ABC Supply Company believes the Medical Provider Defendants are entitled to be paid for their services.

27. The outstanding medical bills currently amount to \$76,721.71 (the "Outstanding Medical Costs"), and are itemized by Defendant in the attached Exhibit A.

28. ABC Supply Company desires to pay the Outstanding Medical Costs as stated in Exhibit A and makes no claim to any portion of the amount.

29. Close's attorneys, Mr. Paul Kieffer and Mr. Benjamin Gallagher of the Gallagher Law Firm, have informed ABC Supply Company that they believe the Gallagher Law Firm is entitled to 1/3 of the Outstanding Medical Costs as payment for Close's legal fees. As a result, they have instructed ABC Supply Company to pay the total amount of \$76,721.71 to the Gallagher Law Firm, and Gallagher Law Firm will retain 1/3 of the amount, or approximately \$25,571.62, and pay the remaining amount to the medical providers.

30. Upon information and belief, each the Medical Provider Defendants believe that they are entitled to full payment of the Outstanding Medical Costs and seek full payment from ABC Supply Company of the amounts described in

Exhibit A. Several of the Medical Provider Defendants have made repeated requests to ABC Supply Company for payment.

31. By reason of these conflicting claims of the Defendants, ABC Supply Company is in great doubt as to which Defendant is entitled to be paid, and the amount of such payment.

32. By reason of these conflicting claims and the number of Defendants claiming portions of the total amount, Plaintiff is exposed to multiple liability from multiple Defendants. Some Defendants have already suggested the potential for litigation against ABC Supply Company if payment is not made within a short period of time.

33. Plaintiff has filed a motion simultaneously with this Complaint to request permission to deposit the full amount in controversy with the Court pending the resolution of this action.

WHEREFORE, Plaintiff requests judgment as follows:

(a) enjoining the Defendants from commencing or prosecuting any action against Plaintiff for the recovery of the any portion of the amount described above;

(b) ordering the Defendants to interplead and settle between themselves their rights to the amount described above;

(c) dismissing Plaintiff from this action and from all liability with regard to the \$76,721.71 at issue in this case;

(d) awarding Plaintiff its costs and attorneys' fees; and

(e) granting such other relief as the Court determines to be just and equitable.

Dated this 10<sup>th</sup> day of January, 2011.

**GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.**

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